

CV 08 0889

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

-----X  
JANE BARASCH, on her own behalf  
and on behalf of all others similarly situated,

★ MAR 03 2008 ★

LONG ISLAND OFFICE

Plaintiff,

-against-

(S.F.)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

DCM SERVICES, LLC

GLEESON, J.  
POLLAK, M.

Defendant.  
-----X

Plaintiff, by and through her undersigned attorney, alleges upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et. seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors within the meaning of 15 U.S.C. § 1692a(6) from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

### PARTIES

4. Plaintiff Jane Barasch (hereinafter "Jane Barasch") is a resident of the State of New York, Kings County. On or about March 6, 2007, plaintiff received and came into contact with an initial form collection letter from Balogh Becker, Ltd. at plaintiff's home address.

#### Exhibit A.

5. Defendant DCM Services, LLC is a Delaware Corporation which is engaged in Deceased Credit Management. Defendant attempts to collect debts alleged to be due another. Upon information and belief, James Balogh and Gary W. Becker are members of DCM.

### CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of herself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as indicated in paragraphs numbered 16-20, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of DCM Services, LLC.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, dozens of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e, 1692e(5), 1692e(10), 1692g(a)(3), 1692g(a)(4) and 1692g(a)(5).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the

duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

#### STATEMENT OF FACTS

15. Starting on or about March 6, 2007, defendant received a law firm letter from Balogh Becker, Ltd., a Minnesota Corporation. Upon information and belief, Balogh Becker, Ltd. is now Inactive. The letter demanded payment of a debt allegedly owed by the late Peter Sheran to Discover Financial Services, LLC.

**Exhibit A.**

16. On or about April 24, 2007, plaintiff, through Dan Shaked, Esq. disputed the validity of the debt. **Exhibit B.**

17. On November 7, 2007, DCM Services, LLC, located at the same address as Balogh Becker, Ltd. sent a collection letter to plaintiff directly and failed to apprise her of her rights as required by 15 U.S.C. § 1692g.

FIRST CAUSE OF ACTION

18. Each of the above allegations is incorporated herein.

19. The collection letter violated numerous provisions of the FDCPA by contacting consumers who have disputed the validity of the debt with Balogh Becker, Ltd. and were subject to continued collection through DCM Services, LLC despite the failure to provide verification of the disputed debt.

20. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

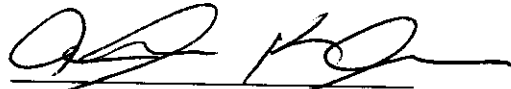
**WHEREFORE**, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages;
- d) Awarding plaintiff and the class costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff and the class such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: March 3, 2008  
Uniondale, New York

A handwritten signature in black ink, appearing to read 'Abraham Kleinman', is written over a horizontal line.

Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RexCorp Plaza  
Uniondale, New York 11556-0626  
Telephone (516) 522-2621  
Facsimile (888) 522-1692



MINNESOTA OFFICE  
GARY W. BECKER - DC, FL, IL, MN, WI  
"CREDITORS RIGHTS SPECIALIST"  
AMERICAN BOARD OF CERTIFICATION

**BALOGH BECKER, LTD.**  
**ATTORNEYS AT LAW**

**FLORIDA OFFICE:**  
2900 UNIVERSITY DR  
SUITE 54  
CORAL SPRINGS, FL 33065  
ANTHONY J. MANICALCO - FL

**MICHIGAN OFFICE:**  
24300 KARM BLVD.  
NOMI, MI 48375

**OF COUNSEL:**  
LIFOW LAW OFFICES, P.C.  
(IOWA)

LUSTIG, GLASER & WALSON, P.C.  
(MASSACHUSETTS)

CHELSEA A. WHITLEY - AZ, KY, MI, MN, WI  
ANGELA M. HORN - MN  
MARY ELLEN WEBERMAN - KS, MN, MO  
STEVEN M. TOMB - MN  
MICHAEL M. PROBST - MN  
MICHAEL J. DOUGHERTY - IN, MN  
JILL M. O'BRIEN - MN  
ANDREW S. MILLER - MN  
MATTHEW R. EICHENLAUS - MN  
JENNIFER C. MERRY - NJ, TX  
ROBIN R. LECHOWSKI - CA, MN  
JACK ARNDT II - CA, MN  
JASON R. ASTRUP - MN, ND  
TYRNA - MN  
KRISTY J. MAIO - MN, OR  
MARTHA J. BALDWIN - MN

SEND ALL WRITTEN REPLIES TO:

4150 OLSON MEMORIAL HIGHWAY, SUITE 200  
MINNEAPOLIS, MINNESOTA 55422-4811

TELEPHONE 763-852-8440  
FAX 866-234-0503  
TOLL-FREE 877-768-4498

Hours (CST): 7:00 am - 9:00 pm M - TH  
7:00 am - 5:00 pm F  
8:00 am - 12:00 pm S

March 6, 2007

Account No  
\*\*\*\*\*1817

Unpaid Balance  
\$1414.00

Reference No  
3669706

Dear Sir or Madam:

Our law firm represents Discover Financial Services LLC. We have learned that PETER DAVID SHERAN, who was a valued customer, has passed away. Please accept condolences from our client and our law firm. As indicated above, there is an unpaid balance on this account. Please accept this letter as a Notice of Claim on behalf of our client.

This letter is sent to you solely in your capacity as personal representative of the Estate of PETER DAVID SHERAN. Please call our office toll free at 1-877-768-4498 to discuss resolution of this matter and payment on this account. If you are not the personal representative, please contact us with the name and address of the personal representative or attorney who is handling the estate.


Cordially,  
**Balogh Becker Ltd.**  
Attorneys at Law

**IMPORTANT NOTICE**

Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within thirty days after receiving this notice, this office will obtain verification of the debt or a copy of a judgment against you, if any, and a copy of such verification or judgment will be mailed to you by this office. Upon your written request within the same thirty-day period, this office will provide you with the name and address of the original creditor, if different from the current creditor. This firm is a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose.



**NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION -Side 1 of 2-**

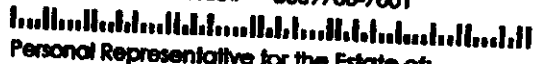
10NBAL0017801

  
LAW FIRM OF BALOGH BECKER, LTD  
4150 Olson Memorial Highway, Suite 200  
Minneapolis, MN 55422-4811  
ADDRESS SERVICE REQUESTED

Reference #: 3669706 Client ID: DISC31  
Balance: \$1414.00

March 6, 2007

  
BALOGH BECKER, LTD  
4150 Olson Memorial Highway Suite 200  
Minneapolis MN 55422-4811  


#BWNHRMD 757875 2458  
#0306 1408 0002 4585# 3669706-7001  
  
Personal Representative for the Estate of:  
PETER DAVID SHERAN  
90 8th Ave Apt 7C  
Brooklyn NY 11215-1539





**SHAKED & POSNER**

ATTORNEYS-AT-LAW  
255 WEST 36<sup>TH</sup> STREET  
8<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10018

TEL (212) 494-0035  
FAX (646) 367-4951

DAN SHAKED  
MICHAEL C. POSNER\*  
\*ALSO ADMITTED IN NJ

April 24, 2007

Balogh Becker, Ltd.  
4150 Olson Memorial Highway  
Suite 200  
Minneapolis, MN 55422-4811

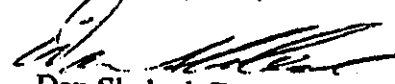
Re: **Reference #: 3669706**  
**Client ID: DISC31**

To Whom It May Concern:

PLEASE BE ADVISED THAT PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §1692c(c), the Personal Representative for the Estate of Peter David Sheran wishes Balogh Becker, Ltd. to cease further communications with the Personal Representative in her capacity as a consumer.

This letter shall further advise that the personal representative disputes the validity of the debt as provided by 15 U.S.C. §1692g.

Very truly yours,

  
Dan Shaked, Esq.

**EXHIBIT C**

# DCM SERVICES, LLC

4150 OLSON MEMORIAL HIGHWAY, SUITE 200  
MINNEAPOLIS, MINNESOTA 55422-4811

TELEPHONE 763-852-8620  
FAX 877-326-8784  
TOLL-FREE 877-326-6761  
November 7, 2007

Hours (CST): 7:00 am - 9:00 pm M - TH  
7:00 am - 5:00 pm F  
8:00 am - 12:00 pm S

Re: Estate of: PETER DAVID SHERAN  
Our Client: Discover Financial Services LLC  
Account No: \*\*\*\*\*1817  
Unpaid Balance: \$1414.00  
Reference No: 3669706

Dear Sir or Madam:

We are trying to resolve the unpaid balance owed by the estate of the deceased. We will accept \$1200.00 as a resolution of the full amount owed, provided payment is received in our office by 11/30/07.

Please call one of our account representatives toll free at 1-877-326-6761 to confirm this arrangement or to make payment by telephone.

Cordially,  
DCM Services, LLC

This company is a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose. Calls may be monitored or recorded for quality assurance purposes.

**NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION**

- Side 1 of 2 -

\*\*\*Detach Lower Portion and Return with Payment\*\*\*

OPFR7132

13669706-7132-11.7.20071  
DCM Services, LLC  
4150 Olson Memorial Highway, Suite 200  
Minneapolis, MN 55422-4811  
ADDRESS SERVICE REQUESTED

November 7, 2007

Reference #: 3669706 Client ID: DISC31  
Unpaid Balance: \$1414.00  
Checks Payable to: Discover Financial Services LLC

Amount Enclosed:

\$

The Estate of PETER DAVID SHERAN  
JANE E BARASCH  
90 8TH AVE APT 7C  
BROOKLYN, NY 11215

DCM Services, LLC  
4150 Olson Memorial Highway Suite 200  
Minneapolis MN 55422-4811

